

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Appeal of the Virginia Division of Gas and Oil Director's Decision IFFH 8193 dated August 9, 1993 (hereinafter the "Decision") in the matter of Jewell Smokeless Coal Corporation, Coal Operator (hereinafter "Jewell Smokeless"), vs. Ashland Exploration, Inc. (hereinafter "Ashland"), Proposed Well 35-PKJ-18 (hereinafter "Proposed Well"), Docket Number VGOB 93-09/21-0408

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") on the 21st day of September, 1993, upon Jewell Smokeless' Petition for Appeal of Director's Decision IFFH 8193 dated August 9, 1993 which found and held that the drilling and/or operations of the Proposed Well would interfere with Jewell Smokeless' present coal operations, and, therefore, the granting of the permit for the Proposed Well to Ashland would be conditioned, among other things, upon an Order of Stay under § 45.1-361.11.C.3, Code of Virginia, for a period of no less than six (6) months from the date of the permit's issuance, after which time the permit would be reviewed and a final decision made by the Director with regard to Ashland's drilling and operations of the Proposed Well.

Jill Morgan of the firm Penn, Stuart, Eskridge and Jones appeared at the hearing as counsel for Jewell Smokeless; Donald R. Johnson, Esquire appeared as counsel for Lon B. Rogers-Bradshaw Trust Number One and Lon B. Rogers-Bradshaw Trust Number Two (hereinafter collectively the "Trusts"); Grant McGuire of the firm Campbell, Woods, Bagley, Emerson, McNeer and Herndon appeared as counsel for Ashland; and Sandra B. Riggs, Assistant Attorney General was present to advise the Board.

HISTORY OF PROCEEDINGS

1. On February 1, 1993, Ashland filed with the Virginia Gas and Oil Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil, its application for a permit for the Proposed Well. Jewell Smokeless objected to the location reflected in the application; therefore, by letter dated April 27, 1993 from Ashland to Jewell Smokeless four alternative locations were offered. By letter dated May 5, 1993, Jewell Smokeless approved location 35-C, with the stipulation that such approval was not intended to be continuing, but would be dependant on mineral lease acquisitions in this area and any mine plans that Jewell Smokeless developed concurrent with those lease acquisitions.

2. On June 14, 1993, Ashland filed with the Virginia Gas and Oil Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil its application for a permit for the Proposed Well at location 35-C. By letter dated June 17, 1993 from Jewell Smokeless to Ashland, Jewell Smokeless further conditioned its approval of location 35-C. The parties were unable to reach an agreement pertaining to the additional conditions.

3. On June 18, 1993 Jewell Smokeless filed modified mine plans with the Department of Mines, Minerals and Energy which reflected mining operations within the Red Ash seam in the vicinity of the Proposed Well.

4. By letter dated June 24, 1993 and received by the Director on June 28, 1993, Jewell Smokeless filed objections to the drilling of the Proposed Well pursuant to § 45.1-361.35 of the Code of Virginia and requested a stay to the permit on the grounds that the proposed well work directly impinged upon Jewell Smokeless' interest, was an unreasonable and arbitrary exercise of Ashland's right to explore for, market and produce gas; and unreasonably interfered with the planning, production, and safe recovery of Jewell Smokeless' coal reserves in the location of the Proposed Well.

5. An Informal Fact Finding Hearing was held on July 27, 1993 pursuant to § 9-6.14:11 of the Code of Virginia, and the Director, Division of Gas and Oil, issued his decision.

6. By letter dated August 18, 1993, Jewell Smokeless applied for a hearing before the Board to appeal the Director's decision pursuant to § 45.1-361.36 of Title 45.1, Mines and Mining, Chapter 22.1 of the Virginia Gas and Oil Act. On August 19, 1993 Jewell Smokeless filed its Petition for Appeal of Director's Decision (hereinafter "Petition") which sought the following relief from the Board pursuant to Va. Code Ann. §§ 45.1-361.1 et seq. (Michie Supp. 1993); VR 480-05-22.1 (1991), VR 480-05-22.2 (1991) and such other regulations promulgated pursuant to law:

- a. Overrule the decision of the Director.
- b. In the alternative, impose a drilling moratorium of two (2) years pursuant to § 45.1-361.11.C.3 (Michie Supp. 1993); and
- c. Grant such other and further relief as may be appropriate based upon the evidence presented at the hearing.

8. At the hearing of Jewell Smokeless' Petition by the Board:

(a) counsel for Jewell Smokeless withdrew the technical objections outlined in Paragraphs 4.A.vii.a through 4.A.vii.e of Jewell Smokeless' Petition.

(b) by stipulation, counsel for Ashland waived any objections Ashland might have pursuant to § 45.1-92.1 of the Code to Jewell Smokeless' mining in the Red Ash seam in the vicinity of the well during the six-month moratorium set forth in the permit for the Proposed Well.

FINDINGS OF FACT

9. The mine plan filed with the Department of Mines, Minerals and Energy (DMME) by Jewell Smokeless in accordance with the requirements of § 45.1-27, Code of Virginia, 1950 as amended, for the mining of the Red Ash seam of coal in the vicinity of the Proposed Well contemplates that mining in that seam will be completed within five (5) months of the date of issuance of the permit.

10. On May 28, 1993, Jewell Smokeless filed with DMME an amendment to include the vicinity of the Proposed Well within the Affected Area, sometimes referred to as "PMU", of their DMME permit. Jewell Smokeless' approved operation plans, subsidence plans and/or mine plans for the Jaw Bone seam do not reflect mining in the area of the Proposed Well.

CONCLUSIONS OF LAW

In considering the criteria set forth in §§ 45.1-361.11.B and 45.1-361.11.C, Code of Virginia, 1950 as amended, the Board finds:

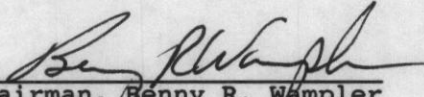
a. As to the Red Ash seam, there is no evidence that the drilling and/or operation of the Proposed Well will be unsafe with respect to persons engaged in coal mining at or near the well site or that the drilling location for the Proposed Well will unreasonably interfere with the safe recovery of coal. Further, in consideration of the additional factors set forth in § 45.1-361.11.C of the Code, the Board finds that the Director's decision to, among other things, impose a drilling moratorium for not less than six (6) months in order to permit the completion of coal mining operations in the Red Ash seam in the vicinity of the Proposed Well prior to the commencement of drilling operation, together with Ashland's stipulation that they waive any objections they might have pursuant to

§ 45.1-92.1 of the Code to such mining in the Red Ash seam during the permit moratorium, gives Jewell Smokeless complete assurance that there will be no interference with their recovery of coal in the area of the of the Proposed Well in the Red Ash seam.

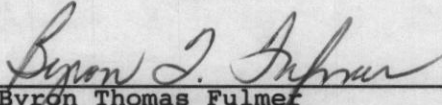
b. As to the Jaw Bone seam, the Board finds no evidence that the drilling and/or operation of the Proposed Well will be unsafe with respect to persons engaged in coal mining at or near the well site or that the drilling location for the Proposed Well will unreasonably interfere with the safe recovery of coal. Mine safety with regard to prospective future mining is contemplated by the provisions and procedures set forth in § 45.1-92.1 of the Code.

Accordingly, this Board affirms the Inspector's decision.

DONE AND EXECUTED this 9th day of December, 1993, by Order of this Board.

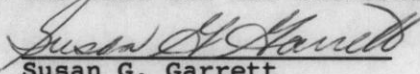

Chairman, Benny R. Wampler

DONE AND PERFORMED this 9th day of December, 1993 by a majority of the Virginia Gas and Oil Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

STATE OF VIRGINIA)
COUNTY OF WISE)

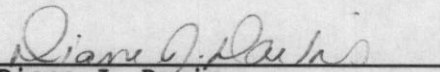
Acknowledged on this 9th day of December, 1993, personally before me a notary public n and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: 7/31/94

STATE OF VIRGINIA)
COUNTY OF WISE)

Acknowledged on this 9th day of December, 1993, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron T. Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My Commission expires: 9/30/97